

### **REMARKS**

In the Office Action of June 12, 2008, the Examiner rejected Claims 25-27 under 35 U.S.C. § 101, as being directed to non-statutory subject matter. The Examiner rejected Claims 18-28 under 35 U.S.C. § 102(b), as being anticipated by U.S. Pat. No. 6,418,419 ("Nieboer"). Applicants respectfully request reconsideration of the rejections of Claims 18-28.

#### **I. Examiner Interview**

On Monday, September 8, 2008, the Applicants' Attorney, Scott Timmerman, interviewed Examiner Samuel Weis. The Nieboer reference was discussed in view of claim 18.

#### **II. § 101 REJECTIONS**

The Examiner rejected Claims 25-27 as being directed to non-statutory subject matter. Applicants have obviated the rejection with appropriate amendments.

#### **III. § 102 REJECTIONS**

The Examiner rejected Claims 18-28 as being anticipated by Nieboer. Nieboer relates to an automated system for conditional order transactions. Nieboer, Abstract. The system will match buy and sell orders with other markets to execute transactions according the conditions of the conditional offer. *Id.* Nieboer discloses that "[t]he invention, in general, will allow the input and display of these orders, and will execute transactions if all of the conditions to each order are met." *Id.* at Col. 15, ll. 65-67.

Claims 18-24 relate to a system that mitigates the effects of rises or falls in market prices caused by the execution of a conditional order. The system includes a spike control processor that delays the matching of orders when an execution price of the conditional order lies outside of a predefined price threshold and that compares an indicative opening price to the predetermined price threshold. The indicative opening price is adjusted by orders requested while the market is not open. The system further includes an open market processor that opens the market when the indicative opening price lies within the predetermined price threshold. The market is reserved when the indicative opening price lies outside of the predetermined price threshold.

Nieboer fails to disclose delaying the matching of orders when an execution price of a

conditional order lies outside of a predefined price threshold as claimed. Nieboer does disclose conditional orders in which the condition may include a range of prices. *Id.* at Col. 15, ll. 55-64 and Col. 17, l. 59 – Col. 18, l. 9. The condition is satisfied and the order is matched when the price is within the threshold. However, Nieboer fails to disclose a predefined price threshold by which the system delays matching orders. Further, Nieboer discloses a conditional offer in which the transaction is in effect for a time period after which the offer expires. *Id.* at Col. 15, ll. 55-60. Accordingly, the trader includes the condition of a time period and the condition of a price range as part of the conditional order in Nieboer. However, the system in Nieboer does not include a predefined price threshold by which the system delays matching orders.

Nieboer also fails to disclose an indicative opening price that is adjusted by orders requested while the market is not open and that the market is opened when the indicative opening price lies within the predetermined price threshold as claimed. Nieboer further fails to disclose that the market is reserved when the indicative opening price lies outside of the predetermined price threshold as claimed. In particular, Nieboer merely discloses general conditional offer transactions regardless of whether the market is opened or reserved. *Id.* at Col. 15, l. 50 – Col. 16, l. 7 and Col. 2, l. 2 – Col. 4, l. 29.

Claims 25-26 relate to mitigating the effect of a market spike caused by a conditional order. The matching of orders is delayed when the execution price is outside a predefined range. Further, the matching of orders is delayed until the opening price lies within a second predefined price range or a time period lapses. As discussed above, Nieboer fails to disclose a matching delay when the execution is outside of a predefined range. In addition, Nieboer also fails to disclose a second predefined range by which matches are delayed as claimed.

Claim 27 relates to a signal bearing medium for mitigating the effect of a market spike caused by a conditional order. A delay logic delays the matching of orders when the transaction price is outside of a predefined price range. A timing logic uses a time interval to delay order matching until the opening price is within a predefined price range up to a maximum delay time. As discussed above, Nieboer fails to disclose a matching delay when the execution is outside of a predefined range. In addition, Nieboer also fails to disclose a delaying matching until an opening price is within a predefined price range and where the delay is up to a maximum delay time. Also, as discussed above, Nieboer fails to disclose that the market is

opened when the opening price is within a predefined price range.

Claim 28 relates to a method for mitigating the effect of a market spike caused by a conditional order. The matching of orders is delayed when the execution price is outside a predefined range. Further, the matching of orders is delayed until the opening price is within a predefined price range up to a maximum delay time. As discussed above, Nieboer fails to disclose a matching delay when the execution is outside of a predefined range. In addition, Nieboer also fails to disclose delaying matching until an opening price is within a predefined price range and where the delay is up to a maximum delay time.

#### IV. CONCLUSION

Applicants respectfully submit that all of the pending claims are in condition for allowance and seeks early allowance thereof. If for any reason, the Examiner is unable to allow the application but believes that an interview would be helpful to resolve any issues, Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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Date

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